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SUBJECT: AUSTRIA ON VISA WAIVER PROGRAM CONSULTATIONS

REF: (A) STATE 2059 (B) 08 VIENNA 1878

¶1. (U) Summary. In a Jan. 21 meeting with senior Embassy staff, Austrian MFA and Interior Ministry officials proposed that a U.S. delegation visit Vienna in either the second week of February or the first or second week of March for consultations focused on Austrian concerns about U.S. data protection legislation and practices. As reported previously (e.g., Ref B), these are the major obstacles to conclusion of HSPD-6 and/or PCSC agreements with Austria. Washington guidance on the proposed consultations is requested. End Summary

-- Response to Letter

¶2. (U) MFA Director for Justice and Home Affairs Johann Brieger and Interior Ministry Director for International Affairs Hager met Jan. 21 with Embassy Vienna Econ/Pol Counselor, Consul General, and DHS Attache to discuss Secretary Chertoff's Dec. 31 letter to Austrian Ambassador Nowotny on new VWP security requirements. The Austrians had been well briefed in Brussels and Vienna on the content of the letter and had just a few questions about it. MOI's Hager asked about the necessity for an exchange of letters on LASP, given the USG's acknowledgment that Austria was already fulfilling all the substantive requirements of the 2007 VWP legislation. E/P Counselor noted that while we are in agreement on substance, the U.S. legislation requires a bilateral agreement and that, in the USG view, a simple exchange of letters confirming existing practices is considered sufficient to meet the legal requirement. Hager also asked about the form the biennial review of VWP compliance would take. DHS Attache explained that the review will largely be internal to the USG, to certify that the necessary data is being received by the proper authorities within the USG. Only if a problem appears would consultations with Austria be necessary and, while such consultations might include exchanges of visits, these were not generally expected to be part of the review process. Hager indicated that an Austrian written response to Secretary Chertoff's letter would be forthcoming.

-- Proposed Consultations

¶3. (U) Brieger reported that an Austrian interagency team had met Jan. 13 to discuss the letter and had agreed that the Ministry of Foreign Affairs should proceed to formally request a negotiating mandate from the cabinet for the two agreements. This process would take "a few weeks," according to Brieger. In addition, the Austrians would like the U.S. to send an experts delegation to Vienna to discuss concerns in Austria's data protection agencies about the scope and vigor of U.S. data protection legislation and procedures. These are, as Embassy has previously reported, the greatest obstacle to conclusion of HSPD-6 and/or PCSC agreements with Austria. Brieger also noted that the conclusion of a U.S.-EU agreement on data protection, if it could be incorporated into the text of the two agreements, would also serve to resolve Austrian concerns. Brieger reported that Commission

contacts had suggested that such an agreement was likely by the end of 2009.

¶4. (U) Brieger and Hager suggested that the expert consultations in Vienna take place either the second week of February or the first or second week of March. He proposed two sessions. The first would be with members and staff of Austria's Data Protection Council (Datenschutzrat), and include a U.S. presentation on data protection laws and regulations and their implementation in practice, and an opportunity for unscripted exchanges and questions/answers. The second session would be with Austrian ministerial officials alone and would look specifically at the data protection provisions of the HSPD-6 and PCSC agreements in light of the morning's discussions.

-- Comment

¶5. Post understands that the skeptical views of Austria's data protection community about U.S. data protection standards are well known to the Departments of State and Homeland Security. Austria, no less and perhaps more than the EU as a whole, is particularly concerned about legal rights of redress and limits on transfer of data exchanged to third parties. Washington may wish to consider whether, if indeed there is a good and timely prospect of reaching U.S.-EU agreement on data protection, engagement with Austria now would be worth the commitment of time and other resources required. For its part, Post would welcome a visit by data protection experts and dialogue with the Austrians, and requests Washington guidance on the Austrian proposal for consultations. End Comment.
KILNER